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REPORT
101-36

IMPEACHMENT OF WALTER L. NIXON, JR.

APRIL 25, 1989.—Referred to the House Calendar and ordered to be printed

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Mr. BROOKS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. Res. 87]

The Committee on the Judiciary, to whom was referred the resolution (H. Res. 87) impeaching Walter L. Nixon, Jr., judge of the United States District Court for the Southern District of Mississippi for high crimes and misdemeanors, having considered the same, report favorably thereon with an amendment and recommends that the resolution as amended be agreed to.

The amendment is as follows:

Strike out all after the resolving clause and insert in lieu thereof the following:

That Walter L. Nixon, Jr., a judge of the United States District Court for the Southern District of Mississippi, be impeached for high crimes and misdemeanors, and that the following articles of impeachment be exhibited to the Senate:

Articles of impeachment exhibited by the House of Representatives of the United States of America in the name of itself and all of the people of the United States of America, against Walter L. Nixon, Jr., a judge of the United States District Court for the Southern District of Mississippi, in maintenance and support of its impeachment against him for high crimes and misdemeanors.

ARTICLE I

On July 18, 1984, Judge Nixon testified before a Federal grand jury empaneled in the United States District Court for the Southern District of Mississippi (Hattiesburg Division) to investigate Judge Nixon's business relationship with Wiley Fairchild and the handling of the criminal prosecution of Fairchild's son, Drew Fairchild, for drug smuggling. In the course of his grand jury testimony and having duly taken an oath that he would tell the truth, the whole truth, and nothing but the truth, Judge Nixon did knowingly and contrary to his oath make a material false or misleading statement to the grand jury.

The false or misleading statement was, in substance, that Forrest County District Attorney Paul Holmes never discussed the Drew Fairchild case with Judge Nixon.

Wherefore, Judge Walter L. Nixon, Jr., is guilty of an impeachable offense and should be removed from office.

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ARTICLE II

On July 18, 1984, Judge Nixon testified before a Federal grand jury empaneled in the United States District Court for the Southern District of Mississippi to investigate Judge Nixon's business relationship with Wiley Fairchild and the handling of the prosecution of Fairchild's son, Drew Fairchild, for drug smuggling. In the course of his grand jury testimony and having duly taken an oath that he would tell the truth, the whole truth, and nothing but the truth, Judge Nixon did knowingly and contrary to his oath make a material false or misleading statement to the grand jury.

The false or misleading statement was, in substance, that Judge Nixon had nothing whatsoever officially or unofficially to do with the Drew Fairchild case in Federal court or State court; and that Judge Nixon "never handled any part of it, never had a thing to do with it at all, and never talked to anyone, State or Federal, prosecutor or judge, in any way influence anybody" with respect to the Drew Fairchild case.

Wherefore, Judge Walter L. Nixon, Jr., is guilty of an impeachable offense and should be removed from office.

ARTICLE III

By virtue of his office as a judge of the United States District Court for the Southern District of Mississippi, Judge Nixon is required to uphold the integrity of the judiciary, to avoid impropriety and the appearance of impropriety, and to obey the laws of the United States.

Judge Nixon has raised substantial doubt as to his judicial integrity, undermined confidence in the integrity and impartiality of the judiciary, betrayed the trust of the people of the United States, disobeyed the laws of the United States and brought disrepute on the Federal courts and the administration of justice by the Federal courts by the following:

After entering into an oil and gas investment with Wiley Fairchild, Judge Nixon conversed with Wiley Fairchild, Carroll Ingram, and Forrest County District Attorney Paul Holmes concerning the State criminal drug conspiracy prosecution of Drew Fairchild, the son of Wiley Fairchild, and thereafter concealed those conversations as follows:

(1) Judge Nixon concealed those conversations through one or more material false or misleading statements knowingly made to an attorney from the United States Department of Justice and a special agent of the Federal Bureau of Investigation during an interview of Judge Nixon conducted in Biloxi, Mississippi, on April 19, 1984. The substance of the false or misleading statements included the following:

(A) Judge Nixon never discussed with Wiley Fairchild anything about Wiley's son's case.

(B) Wiley Fairchild never brought up his son's case.

(C) At the time of the interview Judge Nixon has no knowledge of the Drew Fairchild case and did not even know Drew Fairchild existed, except for what the judge previously read in the newspaper and what he learned from the questioners in the interview.

(D) Nothing was done or nothing was ever mentioned about Wiley Fairchild's son.

(E) Judge Nixon had never heard about the Drew Fairchild case, except what he told the questioners in the interview, and certainly had nothing to do with the case.

(F) Judge Nixon had done nothing to influence the Drew Fairchild case.

(G) State prosecutor Paul Holmes never talked to Judge Nixon about the Drew Fairchild case.

(2) Judge Nixon further concealed his conversations with Wiley Fairchild, Paul Holmes, and Carroll Ingram concerning the Drew Fairchild case by knowingly giving one or more material false or misleading statements to a Federal grand jury during testimony under oath in Hattiesburg, Mississippi, on July 18, 1984. The substance of the false or misleading statements included the following:

(A) Paul Holmes never discussed the Drew Fairchild case with Judge Nixon.

(B) To the best of his knowledge and recollection, Judge Nixon did not know of any reason he would have met with Wiley Fairchild after the Nixon-Fairchild oil and gas investment was finalized in February 1981.

(C) Judge Nixon gave the grand jury all the information that he had and that he could, and had withheld nothing during his grand jury testimony.

(D) Judge Nixon had nothing whatsoever unofficially to do with the Drew Fairchild criminal case in State court.

(E) Judge Nixon never talked to anyone, including the State prosecutor, about the Drew Fairchild case.

(F) Judge Nixon never had a thing to do with the Drew Fairchild case at all.

(G) Judge Nixon "never talked to anyone, State or Federal, prosecutor or judge, in any way influence anybody" with respect to the Drew Fairchild case.

Wherefore, Judge Walter L. Nixon, Jr. is guilty of an impeachable offense and should be removed from office.

I. Introduction

The Committee on the Judiciary has conducted an extensive, independent inquiry into the conduct of Walter L. Nixon, Jr., United States District Judge for the Southern District of Mississippi. In particular, the Committee has considered whether Judge Nixon was truthful during an investigation conducted by the Public Integrity Section of the U.S. Department of Justice and a special federal grand jury empaneled in Hattiesburg, Mississippi. The investigation focused upon Judge Nixon's financial relationship with Wiley Fairchild, a Hattiesburg, Mississippi businessman, and the handling of the state and federal criminal prosecution of Mr. Fairchild's son, Drew Fairchild, for drug smuggling.

After a careful study of the evidence, the Committee finds that Judge Nixon consciously and repeatedly gave false and misleading information during the federal investigation. Judge Nixon lied to federal investigators during an interview conducted in his chambers, and he thereafter testified falsely under oath before the Hattiesburg special federal grand jury.

Judge Nixon was convicted of two counts of making false declarations before the grand jury, each a felony and a form of perjury. He is only the second federal judge in the history of the United States to be convicted of a crime during his judicial tenure. Judge Nixon is currently in prison serving a five-year sentence.

Judge Nixon's conduct was wholly unacceptable for a federal judge and his tainted the integrity of the federal judiciary. The Committee therefore recommends that Judge Walter L. Nixon, Jr., be impeached by the House of Representatives and tried by the United States Senate.

II. A Brief History of Impeachment and the Standard of Conduct Required of Federal Judges

The Constitution gives Congress the ultimate, albeit rarely used, power to remove federal officials from office. The Framers of the Constitution adopted the remedy of impeachment as an essential component of the system of checks and balances integral to our form of government. Alexander Hamilton characterized impeachment "as a method of National Inquest into the conduct of public men." [1] The Farmers sought to protect the institutions of govern-

[1] *The Federalist* No. 65, at 427 (A. Hamilton) (The New American Library, New York, 1971).

ment by providing for the removal of persons who are unfit to hold positions of public trust.

Framers of the American Constitution used British precedent as a model.[2] The British practide of impeachment dates back to the 14th century. In the 150 years prior to the constitutional convention of the United States in 1787, more than 50 impeachments were presented to the House of Lords.[3] At the time of the American constitutional convention, claims of oppression, fraud, cruelty and bribery against Warren Hastings in his capacity as Governor General of India were being presented in an ongoing impeachment trial in London. The notorious Hastings impeachment trial lasted until 1795.[4]

Though modeled on the British example, the American constitutional right to impeach differs in certain fundamental respects. In England, impeachment was a criminal process and the House of Lords held the power to impose imprisonment and even death as punishment.[5] In contrast, Article III, Section 3 of the Constitution states that "Judgment in Case of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of Honor, Trust or Profit under the United States. * * *" Moreover, in England anyone could be impeached except the monarch and the royal family. In the United States only the President, Vice President and civil officers are subject to impeachment. American impeachment is neither a criminal prosecution nor civil litigation, but is a remedial process designed to remove from office those public officials who have abused the public trust.[6] The intent is not to punish the individual but to protect the public "from injury at the hands of their own servants and to purify the public service." [7]

Provisions relating to impeachment are found in the first three articles of the Constitution. Under Article I, Section 2, "The House of Representatives * * * shall have the sole Power of Impeachment." The House considers whether articles of impeachment are warranted. If the House finds sufficient cause for impeachment, the matter is referred to the Senate for trial. Article I, Section 3 grants to the Senate "the sole power to try all Impeachments * * * [a]nd no Person shall be convicted without the Concurrence of two thirds of the Members present."

Article II, Section 4 defines an impeachable offense as "Treason, Bribery, or other high Crimes and Misdemeanors." This phrase was the product of considerable debate at the Constitutional Convention, with several alternative phrases including "Mal or corrupt conduct," "treason, bribery or corruption," and "mal-administration" considered at various times. Some felt that "treason and bribery" was too narrow. George Mason recommended the addition of

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[2] Berger, Raoul, *Impeachment: The Constitutional Problems* (Harvard University Press, Cambridge, Mass., 1973), at 54.

[3] Holdsworth, W.S., *A History of English Law* (12 vols.) (London) Vol. 1 at 384.

[4] Berger, *Impeachment* at 2-3. See generally, Marshall, *The Impeachment of Warren Hastings* (Oxford, 1965).

[5] Berger, *Impeachment* at 55.

[6] *Constitutional Grounds for Presidential Impeachment,* Report by the Staff of the Impeachment Inquiry, Committee on the Judiciary, U.S. House of Representatives, 93rd Congress, 2d Sess. (February, 1974) at 24.

[7] 6 Cannon 643.

"mal-administration." However, James Madison opined that "mal-administration" was too broad, leaving the impeachment process open to corrupt use. George Mason then proposed inclusion of "other high crimes and misdemeanors against the state." This wording stood until the final weeks of the convention when the last three words were removed, leaving the remaining phrase "Treason, Bribery, or other high Crimes and Misdemeanors." [8]

The question of what constitutes a "high crime or misdemeanor" has been raised throughout the history of impeachment proceedings in the United States. The phrase has been characterized as a "term of art" harking back to British precedent. The House and Senate have both interpreted the phrase broadly, finding that impeachable offenses need not be limited to criminal conduct. Congress has repeatedly defined "other high Crimes and Misdemeanors" to be serious violations of the public trust, not necessarily indictable offenses under the criminal laws. Of course, in some circumstances the conduct at issue, such as that of Judge Nixon, constitutes conduct warranting both punishment under the criminal law and impeachment.[9]

The term "Misdemeanor" as used in Article II does not mean a minor criminal offense as the term is generally employed in the criminal law. Indeed, when the phrase "high crimes and misdemeanors" first appeared during the impeachment of the Earl of Suffolk in 1386, the term "misdemeanor" did not denote a violation of criminal law. In the context of impeachment, the word focuses on the behavior of a public official, i.e., his demeanor. Gouverneur Morris, a member of the Committee on Style and Revision of the Constitutional Convention and one of the founding fathers responsible for the final revisions to the Constitution, explained the use of the term "Misdemeanor": "[T]he judges shall hold their offices so long as they demean themselves well, but if they shall misdemean, if they shall, on impeachment, be convicted of misdemeanor, they shall be removed." [10] James Iredell at the North Carolina ratifying convention noted that impeachable misconduct included not only bribery or corruption, but also lack of candor. He stated that the President

> * * * must certainly be punishable for giving false information to the Senate. He is to regulate all intercourse with foreign powers, and it is his duty to impart to the Senate every material intelligence he receives. If it should appear that he has not given them full information, but has concealed important intelligence which he ought to have communicated, and by that means induce them to enter into measures injurious to their country, and which they would not have consented to had the true state of things been disclosed to them, in this case, I ask whether, upon an impeachment for a misdemeanor upon such an account, the Senate would probably favor him.[11]

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[8] Farrand, Max (ed.), *The Records of the Federal Convention of 1787* (Yale Univ. Press, New Haven, 1937) at 443, 545–550.

[9] *Constitutional Grounds for Presiential Impeachment* at 24.

[10] 11 *Annals of Congress* (1982 reprint) at 90.

[11] *Constitutional Grounds for Presidential Impeacehment* at 14.

At the time the impeachment process was included in the Constitution, the Framers were concerned primarily with providing a check on the President. They intended impeachment to be one means to assure the integrity of the Executive Branch. Federal judges were added to the impeachment provision at the end of the drafting process by making "all civil officers of the United States" subject to impeachment, in addition to the President and Vice President.[12]

The legislative trial is unique in our system of government. Congress is the only governmental body with the authority and duty to remove from office a federal judge who has violated the public trust. The unique nature of Congressional impeachment authority is underscored by Article II, Section 2, which precludes the President from exercising his power to pardon in cases of impeachment.

While the remedy of impeachment has been exercised infrequently, history attests to the care with which Congress has discharged this important responsibility. The House of Representatives has exercised its authority to impeach only fifteen times in the 201-year history of the United States Constitution. The fifteen federal officers impeached by the House include one President, one cabinet officer, one Senator and twelve federal judges. The Senate has convicted five of these officers, all federal judges.

The first impeachment occurred in 1797-1799 against Senator William Blount. The Senate ultimately dismissed the charges against Senator Blount for lack of jurisdiction because a Senator was not a "civil officer" and Mr. Blount had already been expelled from the Senate.[13] On February 24, 1868, the House of Representatives voted to recommend impeachment of President Andrew Johnson. President Johnson was acquitted by the Senate.[14] In 1876 William W. Belknap, then Secretary of War, resigned his post prior to a vote by the House. The House of Representatives nevertheless voted to impeach, but the Senate refused to convict for lack of jurisdiction due to Mr. Belknap's resignation.[15]

The remaining twelve impeachments involved federal judges, with five convictions resulting from trial by the Senate.

1. John Pickering (1803–1804)

Judge Pickering was charged in articles of impeachment with refusing to respect the rights of the United States as a party in a case involving the disposition of a ship confiscated by the government, and with profanity and drunkenness while on the bench. Judge Pickering's conduct suggested he was insane at the time of his impeachment. Judge Pickering was convicted on all articles and removed from the bench.[16]

2. Samuel Chase (1804)

Justice Chase was charged with eight articles of impeachment, six alleging that he handled a treason trial and a libel case in an oppressive, unjust and intemperate manner, and two charging him

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[12] Id. at 7.
[13] *Extracts from the Journal of the U.S. Senate* at 15.
[14] Id. at 321-327.
[15] Id. at 423-444; *Constitutional Grounds for Presidential Impeachment* at 49-50.
[16] *Constitutional Grounds* at 42; *Extracts from the Journal of the U.S. Senate* at 32-34.

with making partisan political statements to a grand jury. Justice Chase was acquitted on all articles.[17]

3. James Peck (1830–1831)

Judge Peck was charged with exceeding the limits of his contempt power by imprisoning an attorney who had published an article critical of the judge. Judge Peck was acquitted.[18]

4. West Humphreys (1862)

Judge Humphreys accepted an appointment as a Confederate judge at the outset of the Civil War without resigning as a Federal judge, and proceeded to support the Southern cause while serving on the Confederate bench. Judge Humphreys did not contest the charges and was convicted on all but one of seven impeachment articles.[19]

5. Mark Delahay (1873)

The House passed a resolution of impeachment on the grounds that Judge Delahay had been intoxicated both on and off the bench and was thereby rendered unfit to serve. Judge Delahay resigned before articles of impeachment were voted upon by the House.[20]

6. Charles Swayne (1903–1905)

Judge Swayne was impeached for filing false claims for travel expenses, commandeering a railroad car in receivership for his own personal use, residing outside his judicial district and misusing his contempt power in imprisoning two attorneys and a litigant. The Senate voted to acquit on all twelve articles.[21]

7. Robert W. Archbald (1912–1913)

Judge Archbald, a Circuit Judge of the U.S. Commerce Court and also a district court judge, was charged in thirteen articles with abusing his judicial position by inducing litigants to enter into favorable financial transactions with him.[22] The Senate found Judge Archbald guilty of five of the thirteen articles, including an omnibus article that summarized the other articles and sought the Judge's removal based upon his collective misconduct. During the Archbald proceedings it was debated whether a judge could be impeached for actions not precisely criminal in nature but that nonetheless amounted to misconduct and the appearance of impropriety. One commentator has noted:

> Much conduct on the part of a judge, while not criminal, would be detrimental to the public welfare. Therefore it seems clear that impeachment will lie for conduct not indictable nor even criminal in nature. It will be remembered that Judge Archbald was removed from office for

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[17] Constitutional Grounds at 43–45; *Extracts from the Journal of the U.S. Senate* at 54–60.
[18] *Constitutional Grounds* at 45–46; *Extracts from the Journal of the U.S. Senate* at 141–144.
[19] *Constitutional Grounds* at 46; *Extracts from the Journal of the U.S. Senate* at 152–160.
[20] *Constitutional Grounds* at 49.
[21] Id. at 50; *Extracts from the Journal of the U.S. Senate* at 583–594.
[22] *Constitutional Grounds* at 51–52.

> conduct which, in at least one commentator's view, would have been blameless if done by a private citizen.[23]

8. George W. English (1925–1926)

Judge English was charged with misbehavior in the treatment of litigants. He summoned attorneys and public officials on an imaginary case and threatened them with prison. Judge English was also charged with improperly appointing bankruptcy receivers and wrongfully disposing of bankruptcy funds. Judge English resigned, and the Senate dismissed the charges on motion of the House managers.[24]

9. Harold Louderback (1932–1933)

Judge Louderback was charged with appointing an unqualified receiver who then used excessive fees to pay off the Judge's debts.[25] A majority of the Senators conclude the case had not been proven and voted not guilty. However, the debates were helpful in defining the standard for impeachment. The Congress reasoned that if a judge's conduct casts substantial doubt on the integrity of the judiciary, he has committed an impeachable offense. This was articulated by the House managers in the Senate proceedings:

> From an examination of the whole history of impeachment and particularly as it relates itself to our system of government, when the facts proven with reference to a respondent are such as are reasonably calculated to arouse a substantial doubt in the minds of the people over whom that respondent exercises authority, that he is not brave, candid, honest, and true, there is no other alternative than to remove such a judge from the bench, because wherever doubt resides confidence cannot be present. It is not in the nature of free government that the people must submit to the government of a man as to whom they have substantial doudt.[26]

10. Halsted Ritter (1933–1936)

Judge Ritter was charged in seven amended articles with corrupt and unlawful receipt of funds, practicing law and receiving fees while on the bench, and willfully failing to report and pay tax on income he had received.[27]

The Ritter trial produced significant debate over the standard for impeachment. The House managers asserted that any conduct by a judge that casts doubt upon his integrity constitutes an impeachable offense. They argued that public confidence in the judiciary demands a strict standard of behavior from judges. Representative Sumners, Chairman of the House Judiciary Committee and lead

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[23] *Legal Materials on Impeachment,* Committee on the Judiciary, H. Res. 93, 91st Congress, 2d Session (1970) at 18, citing Brown, *The Impeachment of the Federal Judiciary,* 26 Harv. L. Rev. 684, 704–05 (1913).

[24] *Constitutional Grounds* at 52–54; *Congressional Record* 297 (1926) at 344–348.

[25] *Constitutional Grounds* at 54.

[26] *Proceedings of the U.S. Senate in the Trial of Impeachment of Harold Louderback,* H. Res. 403, 73rd Congress, 1st Session, Doc. No. 73 (1933) at 815.

[27] *Constitutional Grounds* at 55–57.

manager, explained the meaning of the constitutional standard of "good behavior" in his final summation before the Senate:

> It means obey the law, keep yourself free from questionable conduct, free from embarrassing entanglements, free from acts which justify suspicion, hold in clean hands the scales of justice. That means that he shall not take chances that would tend to cause the people to question the integrity of the court, because where doubt enters, confidence departs * * * When a judge on the bench, by his own conduct, arouses a substantial doubt as to his judicial integrity he commits the highest crime that a judge can commit under the Constitution. It is not essential to prove guilt. There is nothing in the Constitution and nothing in the philosophy of a free government that holds that a man shall continue to occupy office until it can be established beyond a reasonable doubt that he is not fit for the office. It is the other way. When there is resulting from the judge's conduct, a reasonable doubt as to his integrity he has no right to stay longer.[28]

In Congressman Sumner's view, one should focus on the effect the judge's conduct has on public confidence in his integrity. If his integrity can reasonably be questioned, confidence is lost and the judge should be removed from the bench.

Judges must be held to a higher standard of conduct than other officials. As noted by the House Judiciary Committee in 1970, "Congress has recognized that Federal judges must be held to a different standard of conduct than other civil officers because of the nature of their positions and the tenure of their office." [29]

The standard of behavior expected of federal judges was perhaps most vividly described during the Halsted Ritter proceedings by Senator McAdoo in a statement later quoted by House Judiciary Committee Chairman Peter Rodino in the Harry Claiborne and Alcee Hastings impeachments:

> Good behavior, as it is used in the Constitution, exacts of a judge the highest standards of public and private rectitude. No judge can besmirch the robes he wears by relaxing these standards, by compromising them through conduct which brings reproach upon himself personally or upon the great office he holds. No more sacred trust is committed to the bench of the United States than to keep shining with undimmed effulgence the brightest jewel in the crown of democracy—justice.[30]

Judge Ritter did not object to the standard applied, but merely attempted to prove that his conduct was proper. The Senate applied a similar standard when it voted to convict Judge Ritter on the last article. Senators Borah, LaFollette, Frazier and Shipstead stated in a joint opinion:

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[28] *Proceedings of the U.S. Senate in the Trial of Impeachment of Halsted Ritter*, 74th Congress, 2d Session, Doc. No. 200 (1936) at 611.

[29] *Legal Materials on Impeachment* at 20.

[30] *Proceedings of the U.S. Senate in the Trial of Impeachment of Halsted Ritter* at 662.

> It is our view that a Federal judge may be removed from office if it is shown that he is wanting in that "good behavior" designated as a condition of his tenure of office by the Constitution, although such acts as disclose his want of "good behavior" may not amount to a crime. * * * If a judge is guilty of such conduct as brings the court into disrepute, he is not to be exempt from removal simply because his conduct does not amount to a crime. * * * [W]e sought only to ascertain from these facts whether his conduct had been such as to amount to misbehavior, misconduct—as to whether he had conducted himself in such a way that was calculated to undermine public confidence in the courts and to create a sense of scandal.[31]

11. Harry Claiborne (1986)

Judge Claiborne was the first federal judge in the history of our nation convicted of a crime while in office. A jury found Judge Claiborne guilty of two counts of filing false income tax returns. Judge Claiborne was in prison serving his sentence at the time of his impeachment and Senate trial. The articles of impeachment focused on Judge Claiborne's false tax returns and under-reporting of income. In addition, in a separate article the House urged the Senate to remove Judge Claiborne from the bench solely because of his criminal conviction.[32]

For the first time in impeachment history, the Senate chose to make use of a committee to hear the evidence pursuant to Senate Impeachment Rule XI, rather than holding trial before the full Senate. The standard for impeachment was examined thoroughly by the Senate impeachment committee that heard evidence and arguments involving Judge Claiborne. The specific issue of what constitutes "High Crimes and Misdemeanors" was confronted by House Manager Kastenmeier in response to questions posed by the Chairman of the Senate Rule XI committee:

> The CHAIRMAN. Thank you very much, Representative Kastenmeier. I have one question, and that is this. Article IV alleges misbehavior and misdemeanor. It does not allege, in the constitutional phrase, "high crime and misdemeanor," and I wonder what thought went into that particular choice of language.
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> Mr. KASTENMEIER. It was in fact meant to be of lesser magnitude in terms of construing the conduct of the respondent. It was intended, incidentally, to suggest to the Federal Judiciary of this country, for purposes of precedent, that we were not relying strictly on a jury finding relating to a felony or a conviction. That we still were interested in the demeanor, the behavior of this civil officer, a judicial officer. And that his actions, having brought disrepute on that institution, were relevant as regarded in a distinct sense. For that reason, we felt article IV to be im-

[31] Id. at 644–645.
[32] H. Res. 461, 99th Congress, 2d Session (1986).

> portant, to be at least as important as the others, in stating the whole case against the repondent.[33]

Senator George Mitchell of Maine, a former federal judge, articulated the following standard of conduct in deciding that Judge Claiborne should be convicted:

> I am convinced that Judge Harry Claiborne knowingly and willfully committed the crimes for which he was convicted.
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> Let me say, those are the most difficult words I have had to speak since entering the Senate. The proudest moment of my life was when I was sworn in as a Federal Judge. It is an honor that is difficult to put into words. But with that honor comes a commensurate responsibility. Those persons who are invested with the awesome power to pass judgments on their fellow citizens must themselves adhere to the highest standards. Otherwise, public respect and support for our judicial system will collapse. * * *
>
> A convicted felon simply cannot sit as a Federal judge. I repeat that, a convicted felon cannot be permitted to sit as a Federal judge. It would totally undermine respect for law and authority in our country.[34]

Judge Claiborne was convicted on all articles except that which urged his removal from office solely on the basis of the felony tax fraud convictions. Forty-six Senators voted "guilty," 17 voted "not guilty" and 35 voted "present" on this article, resulting in less than the two-thirds vote necessary for conviction. A number of Senators opposed this article because they believed it improperly delegated the impeachment function to the judicial branch by forcing the Senate to rely solely on the jury verdict with no independent examination of the facts.[35]

12. Alcee L. Hastings (1988–1989)

On August 3, 1988, the House voted to impeach Judge Alcee L. Hastings of the Southern District of Florida. In seventeen articles of impeachment, the House alleged that Judge Hastings knowingly participated in a bribery conspiracy, willfully testified falsely with the intent to mislead the jury at his criminal trial, and improperly disclosed confidential wiretap information that he learned in his official capacity as a United States District Judge.[36]

During consideration of the Hastings impeachment resolution by the House Subcommittee on Criminal Justice, Congressman Hamilton Fish stated:

> Judge Hastings, according to clear and convincing evidence, engaged in criminal conduct by lying repeatedly during his trial, a course of conduct that led to his acquit-

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[33] *Report of the Senate Impeachment Trial Committee,* Senate Hearing 99-812, Part 1 (September 10, 1986) at 82.

[34] *Proceedings of the U.S. Senate in the Impeachment Trial of Harry E. Claiborne,* 99th Congress, 2d Session (1986) at 338–339.

[35] Id., e.g. at 294–295, 314 (Statement of Senator Specter), 340–341 (Statement of Senator McConnell), 343 (Statement of Senator Mathias).

[36] *Impeachment of Judge Alcee L. Hastings,* Report of the Committee on the Judiciary to accompany H.Res. 499, No. 100–810, 100th Congress, 2d Session (1988) at 5.

tal of conspiracy to commit bribery. The fact that an individual succeeds through crimes committed at trial in winning an acquittal in a criminal case does not release us from our responsibility to bring before the Senate the issue of his removal from public office.

Judge Hastings, according to clear and convincing evidence sought to sell his judicial office for private gain, and later perverted the legal process by lying under oath. Such conduct cannot be tolerated in a public official responsible for dispensing equal justice under law.[37]

In pre-trial proceedings the Senate rejected by a vote of 92 to 1 Judge Hastings' motion to dismiss many of the articles on the ground that his acquittal by the jury created a double jeopardy bar to impeachment for the same conduct as had been at issue in his criminal case. The Senate also rejected by a vote of 93 to 0 a challenge to the final article of impeachment, an "omnibus" article that alleged various misconduct including repeated false testimony at his criminal trial and sought Judge Hastings' removal from office based on the totality of his conduct.[38]

Thus, from an historical perspective the question of what conduct by a federal judge constitutes an impeachable offense has evolved to the position where the focus is now on public confidence in the integrity and impartiality of the judiciary. When a judge's conduct calls into question his or her integrity or impartiality, Congress must consider whether impeachment and removal of the judge from office is necessary to protect the integrity of the judicial branch and uphold the public trust.

III. Background of Inquiry Into the Conduct of Judge Walter L. Nixon, Jr.

On August 29, 1985, Walter L. Nixon, Jr., a United States District Judge for the Southern District of Mississippi since 1968 and Chief Judge of that district since 1982, was indicted by a federal grand jury sitting in Hattiesburg, Mississippi on one count of accepting an illegal gratuity in violation of 18 U.S.C. Section 201(g), and three counts of perjury (false declaration before a grand jury) in violation of 18 U.S.C. Section 1623.[39]

On February 9, 1986, following a two-week trial presided over by Judge James H. Meredith of the Eastern District of Missouri, and after deliberating for 18 hours, the jury unanimously acquitted Judge Nixon of the illegal gratuity count and one perjury count, but convicted him of the two other perjury counts. On March 31, 1986, Judge Meredith denied Judge Nixon's post-trial motions for acquittal and a new trial, and imposed a sentence of five years on each of the perjury counts, to run concurrently. Judge Nixon was released on his own recognizance pending appeal of his convictions.

On September 24, 1986, while his appeal was pending, the Supreme Court of Mississippi suspended Judge Nixon's license to

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[37] *Hearings Before the Subcommittee on Criminal Justice of the Committee on the Judiciary*, H.Res. 128, Impeachment Inquiry, Serial No. 11, July 7, 1988 at 498.

[38] *Congressional Record*, Vol 135, No. 30, 101st Congress, 1st Session (March 16, 1989) at S2802-2803.

[39] *United States* v. *Walter L. Nixon, Jr.*, Cr. No. H85-00012 (L) (S.D. Miss., Hattiesburg Div.).

practice law in that state, finding that perjury is a felony involving "dishonesty, misrepresentation and deceit" such as to warrant suspension of his professional license.[40] The State of Louisiana also suspended Judge Nixon's license to practice law, pending disbarment proceedings in that state.[41]

On April 30, 1987, the Fifth Circuit Court of Appeals affirmed the criminal convictions,[42] and thereafter denied Judge Nixon's petition for rehearing en banc.[43] On January 19, 1988 the United States Supreme Court denied Judge Nixon's petition for a writ of certiorari.[44]

On February 11, 1988, following exhaustion of Judge Nixon's appellate rights, the Judicial Council of the Fifth Circuit certified to the Judicial Conference, as provided by 28 U.S.C. Section 372(c)(7)(B), that Judge Nixon had engaged in conduct that might constitute grounds for impeachment under Article I of the United States Constitution. On March 15, 1988, based solely on the criminal convictions, the Judicial Conference certified and transmitted to the Speaker of the House of Representatives a determination that Judge Nixon's impeachment may be warranted.

On March 23, 1988, Judge Nixon reported to Eglin Air Force Base Prison Camp in Florida to begin serving his sentence. Judge Nixon relinquished all judicial responsibilities following his indictment in August, 1985, and has not performed the duties of his position since that date. However, he will continue to draw his judicial salary for life, currently $89,500 per year, unless and until he resigns or is removed from the bench by impeachment by the House and conviction by the Senate.

The certification of the Judicial Conference that Judge Nixon had "engaged in conduct which might constitute one or more grounds for impeachment" led to the introduction on March 17, 1988 of House Resolution 407, impeaching Judge Nixon. The resolution was referred to this Committee, and subsequently to the Subcommittee on Civil and Constitutional Rights for investigation.

While the subcommittee was conducting its independent impeachment investigation, Judge Nixon sought to vacate his criminal conviction and sentence through a petition filed pursuant to 28 U.S.C. Section 2255 for post conviction relief. The matter was assigned to Chief Judge John F. Nangle of the Eastern District of Missouri, and an evidentiary hearing on the petition was held in Jackson, Mississippi on August 29 and 30, 1988. After considering the evidence and extensive argument by the parties, Judge Nangle denied the motion to vacate the convictions on December 19, 1988.[45]

IV. Committee Consideration and Vote

The Constitution requires that impeachment proceedings have two separate and distinct stages. Article I, Section 2 states that the

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[40] *Mississippi State Bar* v. *Nixon*, 494 So. 2d 1388 (1986).
[41] Order of the Louisiana Supreme Court in Docket No. 88-0699, April 6, 1988.
[42] *Nixon* v. *United States*, 816 F.2d 1022 (5th Cir. 1987).
[43] *Nixon* v. *United States*, 827 F.2d 1019 (5th Cir. 1987) (en banc).
[44] *Nixon* v. *United States*, — U.S. —, 108 S.Ct. 749 (1988).
[45] *Nixon* v. *United States*, Civ. No. H88-0052 (G) (S.D. Miss., Hattiesburg Div.). Judge Nangle's December 19, 1988 opinion is reported at 703 F. Supp. 538 (S.D. Miss. 1988).

House of Representatives "shall have the sole Power of Impeachment," while Article I, Section 3 provides that "The Senate shall have the sole Power to try all Impeachments." The House of Representatives, therefore, inquires into whether an officer of the United States should be impeached, while the Senate conducts the trial if the House adopts articles of impeachment.

Mindful of principles of separation of powers, the need for an independent judiciary, and the House of Representatives' sole and solemn responsibility to determine whether to present articles of impeachment, the subcommittee conducted a thorough, independent investigation into the conduct of Judge Walter L. Nixon, Jr. The subcommittee is aware of the jury verdict in Judge Nixon's criminal trial, but did not feel bound either by the jury's conclusions or by predicate findings of fact that may have led to the guilty verdict.

The subcommittee's investigation began with an exhaustive review of Judge Nixon's criminal case, including pre-trial pleadings, testimony and exhibits from the two-week jury trial, post-trial motions and accompanying testimony, and appellate and post-conviction materials. The trial transcript alone consists of approximately 2200 pages.

The subcommittee also examined the public files regarding the prosecutions of Wiley Fairchild, Redditt Andrew "Drew" Fairchild, and Paul H. "Bud" Holmes, three of the principal witnesses who testified in Judge Nixon's criminal trial. Among other records reviewed were certain grand jury transcripts released by order of Chief Judge John F. Nangle of the Eastern District of Missouri in connection with the action filed by Judge Nixon seeking to vacate his criminal conviction.

The subcommittee conducted seven full days of hearings, during which nine witnesses testified. The subcommittee admitted and reviewed over 100 exhibits during the hearings, and also accepted proffers and affidavits of several other witnesses in lieu of live testimony.

The subcommittee provided Judge Nixon with a full opportunity to present evidence establishing his fitness to remain on the bench. By letter dated March 18, 1988, Committee Chairman Rodino notified Judge Nixon of the introduction of H. Res. 407 and stated that he would have the opportunity to appear and present evidence before the subcommittee. Chairman Rodino again advised Judge Nixon of his opportunity to appear and testify by letter dated May 31, 1988. Throughout the hearings Judge Nixon was present and represented by counsel—David Stewart, Esq., of the Boston and Washington, D.C. law firm of Ropes and Gray, and Boyce Holleman, Esq., and Michael Holleman, Esq., of Gulfport, Mississippi.

Prior to the outset of subcommittee hearings in June, 1988, Judge Nixon, through counsel, declined to testify under oath, saying it was "impossible for him to prepare adequately to present full testimony and respond to questions." Instead, Judge Nixon requested the opportunity to make an opening statement under oath without being subject to questions by the subcommittee. This request was granted. In addition, Judge Nixon asked that his counsel, David Stewart, be permitted to make lengthy argument as an advo-

cate rather than as a fact witness. The subcommittee also granted this request.

Throughout the hearings Judge Nixon through his counsel was afforded the full opportunity to cross-examine witnesses. Notwithstanding the fact that impeachment proceedings have in most cases been ex parte, the subcommittee decided to afford broad latitude to Judge Nixon and his counsel with respect to their opportunity to participate in the subcommittee's public hearings.

Although Judge Nixon declined the initial invitation to give testimony, the subcommittee desired to hear the Judge's own version of the events and extended to him a second opportunity to testify. By letter from his counsel dated July 1, 1988, Judge Nixon accepted this second invitation, subject to a request that he be permitted to testify after all other scheduled witnesses, and that unlike all other witnesses, he be allowed to give his direct testimony under questioning by his own counsel rather than by Special Counsel to the Committee. The subcommittee granted these requests, and Judge Nixon ultimately testified on July 12, 1988.

In addition to affording Judge Nixon and his counsel the opportunity to testify, present evidence, give oral argument and conduct cross-examination, the subcommittee also carefully considered hundreds of pages of written argument presented by Judge Nixon's counsel prior to, during, and after the hearings. The subcommittee made certain that all issues of concern were made known to Judge Nixon so that he could present his position. Accordingly, by letter from Special Counsel to counsel for Judge Nixon dated August 15, 1988, the subcommittee solicited additional argument from the Judge concerning the truthfulness of certain of his statements in his interview and his grand jury testimony that were not directly the subject of criminal charges, but that the Committee ultimately concluded were false. Judge Nixon's counsel submitted lengthy written argument on these statements in response to the subcommittee's invitation.

At the request of Committee Chairman Rodino, the Federal Bureau of Investigation and the Department of Justice assisted the Committee's investigation by making records available for review and by permitting law enforcement officials to be interviewed by the Committee. By letter to Chief Judge Nangle of the Eastern District of Missouri, Chairman Rodino also requested that the Committee be given access to the record of the Hattiesburg grand jury, to determine whether the grand jury had unearthed information that did not ultimately result in criminal charges but that nevertheless might shed light on Judge Nixon's fitness to remain on the bench. Judge Nangle granted the Committee's request by order dated December 5, 1988.[46] The grand jury materials were reviewed as part of the subcommittee investigation.

H. Res. 87, impeaching Judge Walter L. Nixon, was introduced on February 22, 1989, and referred to the Subcommittee on Civil and Constitutional Rights. On March 21, 1989, the subcommittee by vote of 8 to 0 favorably reported to the Committee H. Res. 87, as

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[46] *Nixon* v. *United States*, Civ. No. H88-0052(G)(S.D. Miss., Hattiesburg Div.).

amended, which contains three articles of impeachment against U.S. District Judge Walter L. Nixon, Jr.

Article I deals with Judge Nixon's false statement to the grand jury that the state prosecutor never discussed the Drew Fairchild state drug smuggling case with him. Drew Fairchild is the son of Wiley Fairchild, a local businessman who had provided Judge Nixon with a lucrative oil investment. This same statement was found by the jury to be false and resulted in Judge Nixon's conviction on one of the perjury counts.

Article II deals with Judge Nixon's statement to the grand jury that he had nothing whatsoever, officially or unofficially, to do with Drew Fairchild's case; never talked to anybody, including the State prosecutor, about the case; and never influenced anyone with respect to the case. This statement was also found by the jury to be false and resulted in Judge Nixon's conviction on a second count of perjury.

Article III charges Judge Nixon with undermining the integrity of the judiciary, disobeying the law, and bringing disrepute on the courts by making a series of fourteen false statements during a recorded interview with federal investigators and in grand jury testimony. These fourteen statements show a deliberate effort by Judge Nixon to conceal his knowledge of and involvement in the Drew Fairchild case from federal authorities and the grand jury.

On April 25, 1989, the Committee marked up H. Res. 87. By vote of 34 to 0, the Committee ordered the resolution reported favorably with an amendment in the nature of a substitute containing the three articles recommended by the subcommittee.

V. Statement of Facts

A. Judge Nixon's Oil and Gas Investment with Wiley Fairchild

In February , 1979, Judge Nixon approached Carroll Ingran, who was both a friend and a Hattiesburg, Mississippi, attorney who practiced before him. Hampered by the limitations of hs judicial salary and hoping to generate additional income, Judge Nixon specifically asked Mr. Ingram about the possibility of making an oil investment with one of Mr. Ingram's clients, Hattiesburg construction and oil millionaire Wiley Fairchild. Judge Nixon had never met Mr. Fairchild at the time this request was made, but knew Mr. Fairchild was in the construction business.

In the spring of 1979, Judge Nixon attempted to contact Mr. Ingram to reiterate the Judge's continued interest in investing with Wiley Fairchild. Judge Nixon called periodicaly to check if Mr. Ingram had discussed his request with Mr. Fairchild. Mr. Ingram testified that he felt "on the spot" about Judge Nixon's request and was reluctant to present the matter to Mr. Fairchild, to the point of avoiding the Judge's calls. However, Mr. Ingram ultimately approached Wiley Fairchild and asked him to "put the Judge in a good oil deal."

Wiley Fairchild did not know Judge Nixon personally, but understood he was a federal judge. Mr. Fairchild had previously helped a former Governor of Mississippi and the Mayor of Hattiesburg with investments so as to have "friends" in public office, and saw Judge Nixon as an "influential man" who might be able to help him in

the future. Wiley Fairchild never offered mineral interests to the public. Rather, he purchased oil and gas leases and then developed wells and kept the profit. Judge Nixon knew Mr. Fairchild was not in the business of selling oil interests to the public at large.

Mr. Fairchild finally agreed to convey to the Judge partial interests in three wells, two in Mississippi and one in Alabama. Wiley Fairchild selected the wells himself, without any discussion with Judge Nixon. Mr. Fairchild testifed that he selected three wells that he felt would be profitable for the Judge, although both Mr. Fairchild and Judge Nixon claim they understood the investment to be a "gamble."

In the sumer of 1979, Carroll Ingam told Judge Nixon that Wiley Fairchild would be "delighted" to put in an investment, and by late 1979 Mr. Ingram advised the Judge of the three specific wells Mr. Fairchild had selected. Judge Nixon contacted Mr. Ingram "a couple of times" thereafter to conclude the transaction, and was told by Mr. Ingram that Wiley Fairchild "is the kind of man you cannot push. He will take his own sweet time."

In February or March of 1980, Judge Nixon met Wiley Fairchild for the first time at the office of W.R. Fairchild Construction Company in Hattiesburg. By the end of the meeting, according to Judge Nixon, the two men had reached an agreement to enter into the investment. There was no negotiation over the price or other terms of the investment.

Judge Nixon has testified that, over the next year, he telephoned Wiley Fairchild frequently, perhaps more than ten times. Then in late February, 1981, Mr. Fairchild directed Robert L. ("Skip") Jarvis, an employee in his office, to draw up documents conveying royalty interests in the three wells he had chosen for Judge Nixon. Mr. Fairchild did not identify the grantee and told Mr. Jarvis to leave the grantee portion blank. Mr. Jarvis completed an initial draft of the conveyances and forwarded them to Carroll Ingram for review. Mr. Ingram returned the draft documents to Wiley Fairchild. Mr. Fairchild then instructed Mr. Jarvis to revise the draft documents by tripling the acreage to be sold to Judge Nixon and by backdating the documents a year. During the first week of March, 1981, Mr. Jarvis prepared new documents backdated to February 25, 1980, with increased acreage.

The participants disagree as to the reasons for the backdating. By March, 1891, when the documents were backdated, Wiley's son Drew had been identified by federal authorities as a co-conspirator in a major marijuana smuggling effort at the Hattiesburg Airport. Wiley Fairchild testified that the deeds were backdated on Mr. Ingram's advice "so that it would look better," Judge Nixon testified that Carroll Ingram told him the deeds were backdated to conform to the approximate date of the "gentleman's agreement," i.e. when Wiley Fairchild first agreed to sell the interests to Judge Nixon. Mr. Ingram, however, disputes both Judge Nixon's and Mr. Fairchild's testimony on this point.

The deeds ultimately executed by Wiley Fairchild and Judge Nixon stated that the conveyances were not effective until the date the wells began production. The language of the conveyances indicates that if the wells failed to produce, Judge Nixon had no obligation to pay for the investment.

As part of the loan Judge Nixon executed three promissory notes. Wiley Fairchild testified that these notes were prepared substantially after the deeds were executed. Carroll Ingram testified that someone in his law office prepared the notes at the same time the deeds were prepared. The notes were signed by Judge Nixon in February, 1981, though they are dated February, 1980. The notes were not reported on the Fairchild Construction Company books until the spring of 1982, after Judge Nixon received royalty payments and began to pay off the notes.

Wiley Fairchild met again with Judge Nixon in the late spring of 1981 after the mineral deeds had been delivered to the Judge by Mr. Ingram. On this occasion, Judge Nixon told Mr. Fairchild of his desire to generate additional income because of the anticipated expense of putting his children through college. Judge Nixon has acknowledged that at the meeting, he thanked Mr. Fairchild for "putting him a deal" and told him, "* * * if I can ever help you, I will and if I can't, I'll just tell you I can't."

Judge Nixon began receiving royalty checks from Fairchild Construction Company in February, 1982. By the date of his criminal trial in early 1986, Judge Nixon had received over $60,000 from the three wells, which were expected to produce for another 12 to 20 years. By January 24, 1989, Judge Nixon had received over $73,000 from the Fairchild investment, and continues to receive income from the investment. Judge Nixon paid back the $9,500 notes with interest, but only after receiving royalty payments from Fairchild Construction Company in excess of the initial investment so that he was never out-of-pocket.

B. The Drew Fairchild Drug Smuggling Case

On August 4, 1980, an airplane with 2,200 pounds of marijuana was seized by federal and local drug enforcement agents at the Hattiesburg Municipal Airport. Arrests were made at the scene and on August 19, 1980, an indictment was returned in federal court against three of the smugglers.[47] Drew Fairchild, Wiley Fairchild's 50 year-old son, was a participant in the smuggling conspiracy, but was not prosecuted at that time. Drew Fairchild's role in the conspiracy, as manager of the airport, was to give the plane permission to land and refuel so it could reach its destination.

Shortly after the indictment of the smugglers, Drew Fairchild and his lawyer, Bill Porter, approached Forrest County District Attorney Paul H. "Bud" Holmes to discuss Drew Fairchild's legal situation. Mr. Holmes sent them to George Phillips, United States Attorney for the Southern District of Mississippi, who was overseeing the federal prosecution of the drug case. As a result of discussions with the U.S. Attorney's office, on November 19, 1980, Drew Fairchild entered into a "Memorandum of Understanding" under which he agreed to plead guilty to felony charges, pay a $15,000 fine, and receive a sentence of 5 years probation in return for cooperating with the government in the drug case. Drew Fairchild was subsequently debriefed by agents working with the U.S. Attorney's office, who concluded that Drew Fairchild was not being completely

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[47] *United States* v. *Malcolm Nathan, et al.*, Crim. No. H. 80-00005 (C) (S.D. Miss., Hattiesburg Div.)

cooperative. The U.S. Attorney's office determined, therefore, that Drew Fairchild would be prosecuted for his involvement in the drug smuggling conspiracy.

In March, 1981, Bill Porter sued Drew Fairchild to collect a $10,000 legal fee in connection with his representation of Drew Fairchild in the drug case. Approximately one quarter of the fee was paid by Wiley Fairchild on July 3, 1981, but Mr. Porter complained to Bud Holmes about his inability to collect the full fee from Drew Fairchild. Mr. Holmes thereafter called U.S. Attorney Phillips and discussed the status of Drew Fairchild's case. Mr. Holmes offered to take over the case and indict Drew Fairchild on state drug charges. Mr. Phillips agreed to transfer the case. In his testimony before the subcommittee, Mr. Holmes stated that he assumed control over Drew Fairchild's case both to carry out his law enforcement duties and to help his friend Bill Porter collect the full fee.

On August 26, 1981, the Forrest County grand jury returned an indictment against Drew Fairchild and Robert Watkins, the pilot in the drug-smuggling conspiracy.[48] Mr. Watkins was then a fugitive. Drew Fairchild was arraigned on September 3, 1981 with his attorney, Bill Porter, present. Mr. Porter demanded the remainder of his $10,000 fee "up front." In order to obtain the money, Wiley Fairchild made his son Drew turn over numerous oil leases owned by Drew. Wiley Fairchild then paid Mr. Porter the remainder of the fee.

In December, 1981, Robert Watkins was apprehended in Texas. This spurred negotiations between Drew Fairchild, his counsel and District Attorney Holmes. Drew Fairchild entered a guilty plea to the state charges on January 12, 1982. Messrs. Holmes and Porter orally agreed that if Drew Fairchild cooperated against Robert Watkins, he would receive five years probation and a $5,000 fine, with sentencing to occur after the prosecution of Mr. Watkins was completed. Wiley Fairchild believed that with this plea agreement and his fee payment to Mr. Porter, he would be troubled no more by his son's case, which had generated considerable media attention because of Wiley Fairchild's wealth and standing in the Hattiesburg community.

Drew Fairchild's sentencing was scheduled for March 19, 1982, but was delayed due to his back surgery. In May, 1982, Robert Watkins failed to appear at a scheduled hearing and his bond was revoked. Drew Fairchild's case was continued through the summer of 1982. In October, 1982, Mr. Watkins was apprehended in Florida, and extradition proceedings began. Drew Fairchild's sentencing was continued again in November, 1982, because Mr. Watkins had been apprehended.

On December 23, 1982, pursuant to a motion prepared at the direction of Bud Holmes, Drew Fairchild's drug case was "passed to the file." As a matter of local practice, this meant that Drew Fairchild's case was put on the inactive list. A number of witnesses testified at Judge Nixon's trial that this was an unprecedented disposition for a defendant who has pled guilty. In his subcommittee testimony, Mr. Holmes stated that by passing the case to the files, he intended to "sweep the case under the rug" so that Drew Fairchild

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[48] *State* v. *Redditt Andrew Fairchild and Robert L. Watkins*, No. 10,041 (Cir. Court of Forrest Co., Miss.)

would not even have to pay the fine or serve probation as contemplated under the plea agreement. Drew and Wiley Fairchild were extremely pleased with the passing of the case to the file and believed that Drew's legal problems were finally at an end. This disposition of the case was neither requested nor anticipated by Drew Fairchild. Indeed, Drew Fairchild's attorney, Bill Porter, had asked Bud Holmes to carry out the plea agreement and have Drew sentenced before a particular judge who was presiding over the case left the bench.

District Attorney Holmes repeatedly testified, both at trial and before the subcommittee, that a primary reason for sweeping the Drew Fairchild case "under the rug" was a meeting between Mr. Holmes and Judge Nixon at Mr. Holmes' farm and a telephone call that same evening involving Judge Nixon, Bud Holmes and Wiley Fairchild concerning Drew's case. Bud Holmes verified, both in his trial testimony and his appearance before the subcommittee, that had it not been for Judge Nixon's involvement, the Drew Fairchild case would never have been passed to the files.

In early January, 1983, Forrest County Circuit Court Judge Dickie McKenzie took office after defeating the incumbent, Judge Jack Weldy, in an election. Judge McKenzie observed that the Drew Fairchild case had been passed to the file, expressed his concern about what had occurred, and the matter was reported in the local news media. Robert Watkins was returned to Hattiesburg and arraigned on January 26, 1983. On that same date, one month after passing the case to the files, Mr. Holmes reinstated Drew Fairchild's case to the active docket. In the motion to reinstate the case, Mr. Holmes stated that Mr. Watkins' return to Mississippi justified reactivation of Drew Fairchild's case. Mr. Holmes testified at Judge Nixon's trial, however, that a primary reason for having the case reinstated was negative publicity concerning the passing of the case to the file.

C. Judge Nixon's Involvement in Drew Fairchild's Case

Drew Fairchild's drug prosecution generated a great deal of negative publicity in Hattiesburg. It was a source of embarrassment and humiliation to Wiley Fairchild, who was concerned about his family's reputation. Mr. Fairchild felt he was being extorted in connection with his son's case because of the different treatment of Robert Royals, Drew Fairchild's comanager at the airport and a participant in the smuggling conspiracy. Royals had not been prosecuted by federal or state authorities. Wiley Fairchild testified that Mr. Royals told him that Bill Porter had said Wiley should "get off his money" to help Drew, who had his "tail in a crack."

Convinced that Bud Holmes and possibly others were, in Mr. Fairchild's words, "blackmailing" him in connection with his son's case, Wiley Fairchild sought help from Judge Nixon. Mr. Fairchild testified that he telephoned Judge Nixon and, when the Judge was unavailable, left a message asking the Judge to stop by the W. R. Fairchild Construction Company office in Hattiesburg. Wiley Fairchild specifically wanted Mr. Holmes to take care of his son's case as promised, and sought out Judge Nixon because of the Judge's previous offer of help—"* * * if I can ever help you I will and if I can't, I'll just tell you I can't"—and because he knew Judge Nixon and Mr. Holmes were very good friends.

Judge Nixon visited Wiley Fairchild's office in Hattiesburg for a fifteen or twenty-minute meeting. Wiley Fairchild cannot recall

when this meeting occurred, although he testified at Judge Nixon's trial that it occurred before he learned his son's case had been passed to the file. At the meeting, Wiley Fairchild told the Judge he was being "blackmailed" by Mr. Holmes and possibly Carroll Ingram concerning the handling of Drew Fairchild's drug case. Mr. Fairchild emphasized the unfairness of his son's predicament compared to the treatment of Robert Royals. Wiley Fairchild told Judge Nixon, "* * * if they will go ahead and prosecute Bob Royals they won't hear a damn word out of me. He's guilty and my son's guilty, but I just don't like them picking on my son because I got money." Mr. Fairchild does not recall Judge Nixon's response to his "blackmail" allegations, other than that the Judge may have "grunted a little something or another."

Judge Nixon met with Bud Holmes shortly after hearing of Wiley Fairchild's complaints of "blackmail" in connection with Drew Fairchild's case. Mr. Holmes believes that this occurred on May 14, 1982.[49]

According to Mr. Holmes, he and Judge Nixon had a couple of drinks at the District Attorney's office and then drove to Mr. Holmes' farm outside Hattiesburg. Mr. Holmes testified that during the drive Judge Nixon said that Wiley Fairchild had "asked me [Nixon] if you [Holmes] and I weren't good friends and I told him, yes, you know, we were. And he said, well, would you mind putting in a good word for my boy?" Mr. Holmes testified that Judge Nixon expressly said he did not want Mr. Holmes to do anything wrong, embarrassing, or against his oath of office, but that he [Nixon] was "just saying that Mr. Fairchild asked me to put in a good word."

Mr. Holmes testified that he reacted to these statements from his friend Judge Nixon by asking, "What is it you want? You want an apology? I don't know. What does the man want?" When Judge Nixon reiterated that he was simply "putting in a good word" and not asking Mr. Holmes to do anything, Mr. Holmes responded, "* * * hell, I'm District Attorney, I'll pass it to the files." Judge Nixon then told him, "* * * I'm not asking you to do that. Now I'm not asking you do do anything now."

Bud Holmes testified that after they arrived at the farm, he and Judge Nixon continued to talk about the Drew Fairchild case. Mr. Holmes told Judge Nixon about the oral plea agreement already negotiated with Bill Porter, calling for probation and a fine in exchange for Drew Fairchild's cooperation. Mr. Holmes testified that after hearing the terms of Drew Fairchild's plea arrangement, Judge Nixon asked if Wiley Fairchild knew of the deal, and said he wished to telephone Mr. Fairchild and tell him about the arrangement. Mr. Holmes testified that Judge Nixon then telephoned Wiley Fairchild.

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[49] Mr. Holmes bases his recollection upon unrelated events, particularly a wedding ceremony he attended in Jackson, Mississippi the following day. A marriage certificate made a part of the record before the Subcommittee corroborates Mr. Holmes' recollection of May 14, 1982 as the probable date. Mr. Holmes has repeatedly stated that his meeting with Judge Nixon could well have been another date. Visitor logs from the Forrest County District Attorney's office reflect Judge Nixon's presence at Mr. Holmes' office on May 13, 1982, as well as June 24, July 16, and October 20 of that year.

Wiley Fairchild confirmed that he received a telephone call from Judge Nixon around seven o'clock one night. Mr. Fairchild had been drinking that evening but remembers the call because of its significance. Mr. Fairchild testified that Judge Nixon said, "Wiley, you know that man we was talking to this evening? * * * I'm in his house, and everything (is) going to be taken care of to your satisfaction." Thereafter, according to Mr. Fairchild, Bud Holmes got on the line and said, "Wiley, when this man asks me to do something, I don't ask no questions, I just go ahead and do it."

In this trial testimony Wiley Fairchild specifically recalled that Judge Nixon was on the phone first. Mr. Fairchild testified that this call made him very happy because it meant that his son's case was "done away with once and for all." The next thing he recalled about his son's case was that it was passed to the file.

Mr. Holmes' recollection of the phone call in his trial testimony was similar to Wiley Fairchild's—that Judge Nixon placed the call and told Mr. Fairchild, "I'm out at his farm and he tells me your son isn't going to jail, and I just wanted to call and tell you that." According to Mr. Holmes, Judge Nixon then went on to thank Wiley Fairchild for the profitable oil investment opportunity. Mr. Holmes testified that he then took the phone and told Mr. Fairchild he would pass the case to the file, adding that Judge Nixon should get the credit for helping Drew Fairchild.

Carroll Ingram learned of Judge Nixon's conversations with Bud Holmes and Wiley Fairchild concerning the Drew Fairchild case from all three participants—Wiley Fairchild, Bud Holmes and Judge Nixon himself. Mr. Ingram testified that in the fall of 1982, Wiley Fairchild told him that he (Fairchild) had asked Judge Nixon to talk to Bud Holmes about Drew's case, that Judge Nixon had talked to Mr. Holmes and that the results were "positive" such that "Drew Fairchild's case was going to be okay."

Mr. Ingram testfied that Judge Nixon told him that he (Nixon) had talked to Bud Holmes about the Drew Fairchild case because Wiley Fairchild had asked him to do so. Judge Nixon told Mr. Ingram that Mr. Holmes said he would consider this request and that Drew Fairchild's case "was okay, that there was not anything going to happen in Drew Fairchild's case."

Following his meeting with Judge Nixon and the telephone call to Wiley Fairchild from the farm, District Attorney Holmes let Drew Fairchild's case "just sit" until he passed the case to the file in late 1982 at the end of Judge Weldy's term. Mr. Holmes told the subcommittee that he planned on sweeping Drew Fairchild's case "under the rug" in part because of his discussion with Judge Nixon and promise to Wiley Fairchild. Mr. Holmes testified that while Judge Nixon did not specifically ask him to pass the case to the file, the Judge's "putting in a good word for Drew * * * caused enough influence on me to go ahead and do what I did." Mr. Holmes repeatedly testified, both at trial and before the subcommittee, that but for Judge Nixon's intervention he would not have passed the case to the file in December, 1982.

Mr. Holmes gave a copy of the order passing Drew Fairchild's case to the file to Carroll Ingram, with a request that Mr. Ingram pass it along to Wiley Fairchild. Wiley Fairchild testified that Mr.

Ingram did so and that Mr. Ingram told him upon delivery, "I got you a Christmas present."

D. The FBI/Department of Justice Interview of Judge Nixon on April 19, 1984

On November 3, 1983, an anonymous caller telephone the Federal Bureau of Investigation claiming there was an improper relationship between Wiley Fairchild and Judge Nixon. The caller suggested that Wiley Fairchild may have conveyed mineral interests to Judge Nixon as a bribe for favorable treatment in Drew Fairchild's drug case. The caller advised the FBI that the mineral interests had been backdated to make it appear that the transfer had taken place before Drew Fairchild's drug trouble, and not as a result of the drug case. He also claimed that the notes to be repaid by Judge Nixon were not prepared in the normal course of business, but appeared only after Wiley Fairchild had been challenged by one of his employees on his relationship with Judge Nixon. The informant ultimately came forward and identified himself as Robert Jarvis, a former employee of Wiley Fairchild. Mr. Jarvis is presently an Assistant State's Attorney in Florida.

During the subsequent investigation conducted by the FBI and the Public Integrity Section of the Department of Justice, Mr. Jarvis recorded a meeting with Wiley Fairchild, in which Mr. Fairchild maintained that there was nothing illicit about his relationship with Judge Nixon, but admitted that "certainly I'd rather do something for a judge or a prosecuting attorney. No, a judge. I'd rather do something for them than the average fellow. Because they're the ones who help you if you ever need it."

As part of the investigation, a lawyer from the Department of Justice and an FBI agent interviewed Judge Nixon in his chambers in Biloxi, Mississippi on April 19, 1984. The interview was taped-recorded with the Judge's consent. Judge Nixon was advised prior to and during the interview that the investigation was examining Judge Nixon's investment with Wiley Fairchild and the unusual handling of the Drew Fairchild case. During the interview, Judge Nixon denied, at several times and in the broadest possible terms, any knowledge of or participation in Drew Fairchild's case:

> Q. Did he [Wiley Fairchild] have anything on his mind that he wanted with you——
>
> Judge NIXON. You'd have to ask him because he's never asked——
>
> Q. I mean, did——
>
> Judge NIXON. Anything that or demanded anything. Of course, anything to do with his [Fairchild's] son's case absolutely had nothing whatsoever, cause I don't, I'm not even aware of really what that's about. I think I read something in the paper one time about it since then.
>
> Q. Did you——
>
> Judge NIXON. But if you can——
>
> Q. Detect anything——
>
> Judge NIXON. If you can detect or know of anything at, all where I ever had any connection with his son's case or

the disposition of it or handling of it or anything to do with it, I sure wish you'd tell me, and I'll——

Q. I, well, I——

Judge NIXON. Because there has——

Q. I can assure you, we have no information to that effect——

Judge NIXON. There has, because there has been nothing.

Q. No, I, I guess what I'm asking you is whether or not you detected anything untoward from either——

Judge NIXON. Abso——

Q. Mr. Fairchild——

Judge NIXON. Absolutely not. If I had, I'da pulled back immediately and would't have had a darn thing to do with it.

Q. From the time of that bust until ba-basically me talking to you about the case——

Judge NIXON. Uh-huh——

Q. You've had no connection, no knowledge of it, no participation in——

Judge NIXON. Correct——

Q. The Drew Fairchild case?

Judge NIXON. Absolutely, except something I read in the paper. It was either an editorial or state, or, or news article or something, a few years ago, I think——

* * * * *

Q. Do you recall any knowledge of the case, meaning the Fairchild case, while you were dealing with Wiley Fairchild?

Judge NIXON. No.

Q. And he certainly never brought it up?

Judge NIXON. Not to my recollection. I think I would recall that.

* * * * *

Q. Does he [Drew Fairchild] work with his father?

Judge NIXON. I have no idea. Didn't even know he existed, except from what I read about that and what you just told me. Absolutely no.

* * * * *

Q. I mean, I, our earnest desire is to wrap this end of it——

Judge NIXON. I understand——

Q. Completely, and often times judges are victimized by others——

Judge NIXON. Yeah, well, I don't——

Q. I mean, you're a savvy guy. You know that this happens.

Judge NIXON. Well, I don't know about that part of it, but all I know is ah nothing was done or nothing was ever mentioned about Wiley Fairchild's son, and I defy anybody to, and I say defy, I don't mean (unintelligible), but I challenge anybody to show any connection or anything I've

ever done in connection with Wiley Fairchild's son's case I certainly would (unintelligible) to begin with. And if I even suspected something like that was going on, I certainly wouldn't have ah invested or have any dealings, absolutely.

* * * * *

Q. Okay, so I'm—Just to complete the picture——

Judge NIXON. That's what I was, that's what I wanted to ask you, what allegation—I've never heard, you know, never had the [Drew Fairchild] case never heard about the case except what I told you, and ah certainly had nothing to do with it.

* * * * *

Judge NIXON. I understand, but regardless, what connection have I had with ah Fairchild's son's case? Isn't that the bottom line?

Q. It, it basically——

Judge NIXON. I mean——

Q. Could well be the bottom line.

Judge NIXON. Yeah, what, what——

Q. And that's why——

Judge NIXON. Could I have conceivably done?

Q. Well, that's why I had to ask you——

Judge NIXON. To influence the case? Ah, I certainly didn't do a thing in the world. I don't know a thing about—But what could I have done?

Q. Well, I mean, I don't know what you could have done. I mean it——

Judge NIXON. As United States District Judge.

Q. If someone wanted to use their imagination, I suppose they, they could think of things, and, I, that's why we ask you the question did Bud Holmes ever talk to you about the case?

Judge NIXON. Oh, no.

During the April, 1984, interview Judge Nixon did not disclose his meeting with Wiley Fairchild in which Mr. Fairchild had complained that he was being "blackmailed" by Bud Homes in connection with Drew Fairchild's case. Judge Nixon did not disclose his visit to Bud Holmes' farm and susequent telephone conversation with Wiley Fairchild concerning Drew's case. Nor did Judge Nixon reveal his later telephone conversation with Carroll Ingram concerning Drew Fairchild. Instead, Judge Nixon repeatedly and categorically denied any knowledge or involvement whatsoever concerning Drew Fairchild and the drug case. The Committee finds that Judge Nixon deliberately refused to disclose these important facts, and lied to law enforcement officials in an effort to cover up his involvement.

E. Judge Nixon's Sworn Testimony Before the Grand Jury on July 18, 1984

In the summer of 1984 a special federal grand jury was enpaneled in Hattiesburg to investigate possible criminality associated

with the Fairchild-Nixon investment and the handling of the Drew Fairchild drug prosecution. Judge Nixon appeared voluntarily and *testified under oath on July 18, 1984,* the first day the grand jury was convened. Judge Nixon retained counsel prior to his grand jury appearance, and was represented by counsel at the time of his testimony.

Judge Nixon was convicted of one count of making a false declaration before the grand jury,[50] a felony and a form of perjury, for the following testimony before the grand jury:

> Q. The grand jury has heard evidence that the prosecutor, the state prosecutor, who eventually handled the case was an individual named Bud Holmes. Is he a friend of yours?
>
> A. Very good friend of mine, long time friends, yes.
>
> Q. Did he ever discuss the Drew Fairchild case with you?
>
> A. No, not to the best of my recollection. I think I would recall if he had.

The jury also found Judge Nixon guilty of making a second false declaration based on the following grand jury testimony:

> Q. All right. Judge, do you have anything you want to add?
>
> The WITNESS. Yes, I do.
>
> I want to say this. I—Here (indicating) are your notes too, copies of your instruments, rather.
>
> I came here voluntarily and am very to cooperate with this grand jury and give them all the information that I have and that I could. And I have always thought everyone should do that, and that goes for the grand jury over which I'm supervising now, the other federal grand jury that's sitting at this time. I have nothing at all to—had nothing to hide or nothing to withhold and I brought everything that you asked me to bring.
>
> And I want to say this. That I've been told and led to believe and read in the newspaper and heard on the news media so much about this is an investigation of the Drew Fairchild criminal case. Now, I have had nothing whatsoever officially or unofficially to do with the Drew Fairchild criminal case in federal court or state court. I don't need to reconstruct anything with reference to that. I've told you that from the beginning.
>
> I have never talked to anyone about the case, any federal judge or state judge, federal prosecutor or state prosecutor, and I never handled any aspect of this case in federal

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[50] 18 U.S.C. Section 1623 provides that "Whoever under oath * * * in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration * * * shall be fined not more than $10,000 or imprisoned not more than five years, or both." In order to convict Judge Nixon of this form of perjury, the jury was required to find beyond a reasonable doubt that Judge Nixon's grand jury testimony was false, and that Judge Nixon knew his testimony was false. See *United States* v. *Nixon*, 816 F.2d 1022, 1029 (5th Cir. 1987). In addition, to establish this offense, the false statements must be material to the grand jury's investigation. At Judge Nixon's trial the question of materiality was resolved out of the presence of the jury by the trial judge. On appeal Judge Nixon did not challenge the correctness of the trial court's ruling that the subject matter of Judge Nixon's statements to the grand jury was, as a matter of law, material to the grand jury's investigation. 816 F.2d at 1029.

court. As you said, Judge Cox handled it. I don't know where—someone told me maybe Judge Russell handled one of the other defendants also and—but I never handled any part of it, never had a thing to do with it at all, and never talked to anyone, state or federal, prosecutor or judge, in any way influence anybody with respect to this case. Didn't know anything about it until I read that account in the newspaper. Didn't even know Mr. Fairchild had a son when I was dealing with him in the business transaction.

So I want to say that because I understand that's what this is all about. The investigation is apparently, if the news media is correct, and if I understand it correctly, that's what this is about, the Drew Fairchild criminal case.

The Committee learned through its independent inquiry, that this closing statement to the grand jury was not spontaneous, but was prepared in writing by Judge Nixon prior to his grand jury appearance.

In addition to the foregoing grand jury testimony that was the focus of criminal charges and led to his convictions, Judge Nixon described to the grand jury his meetings with Wiley Fairchild as follows:

Q. If the first meeting [with Wiley Fairchild] produced the deal, what would the other meetings have been for?

A. I met with him several times. One time he told me that he thought he was over—maybe overcharging me for these and would maybe put me in another later. He mentioned something about the name of a well was—I don't know, remember when this was—it had something to do with the name School in the property. But he never did and there never was any mention of it.

And, as I say, I don't know of any reason I would have met with him after the transaction was finalized in the first part of 1981, but I can't say for sure. It's possible.

You're asking me about—I—I don't like to keep repeating it—but three or four years ago, and I'm trying to reconstruct this to the best of my recollection and knowledge.

As with the other grand jury and interview excerpts cited above, the Committee finds this response to be another instance of deliberate dissembling by Judge Nixon in an effort to conceal his meeting with Wiley Fairchild, his visit to Bud Holmes and the telephone call to Wiley Fairchild about the Drew Fairchild drug case. Although Judge Nixon was under the sworn obligation "to tell the whole truth and nothing but the truth" in his grand jury testimony, the Committee finds that he deliberately chose to conceal pertinent information from the grand jury.

F. The Prosecution of Wiley Fairchild, Bud Holmes and Drew Fairchild

On September 6, 1984, the Hattiesburg grand jury indicated Wiley Fairchild on charges of perjury and paying an illegal gratu-

ity to Judge Nixon. The perjury count alleged that Mr. Fairchild had instructed his employees to cover up his mineral transactions with Judge Nixon, and had failed to testify truthfully about this matter before the grand jury. The gratuity count was based upon the royalty payments to Judge Nixon.[51]

Prior to trial Wiley Fairchild told his attorneys about Judge Nixon's involvement in his son's case. During plea bargain discussions Mr. Fairchild's attorneys made government prosecutors aware for the first time of the meeting with the Judge in which Mr. Fairchild complained of being "blackmailed" in connection with his son's case and the telephone call by Judge Nixon from Bud Holmes' farm. On November 26, 1984, Wiley Fairchild pled guilty to the illegal gratuity charge. The perjury count was dismissed as part of the plea bargain, and in September, 1985, Mr. Fairchild was sentenced to two months of incarceration, which he served at a halfway house in Jackson, Mississippi.

On November 28, 1984, following the consummation of his plea agreement with the government, Wiley Fairchild appeared again before the Hattiesburg grand jury. Mr. Fairchild admitted he had not been completely honest in his initial grand jury appearance, and stated that he was not approached by Carroll Ingram on Judge Nixon's behalf about the investment until after the drug bust at the airport. Mr. Fairchild told the grand jury that the mineral conveyances to Judge Nixon were backdated to a date before the drug bust so that "they couldn't connect" the conveyances with his son's case. He also told the grand jury that he "wasn't concerned" with being paid by Judge Nixon for the mineral interests, which he said were actually worth three times the price Judge Nixon paid. Mr. Fairchild then told the grand jury about his meeting with Judge Nixon concerning his son's case, the subsequent telephone call from Bud Holmes' farm, and the passing of Drew Fairchild's case to the files.

Federal prosecutors learned more about the telephone call from Bud Holmes' farm through an interview of Carroll Ingram in January, 1985. Mr. Ingram then told Mr. Holmes that the government knew about the phone call and Judge Nixon's involvement in the Drew Fairchild case.

Shortly thereafter, Bud Holmes appeared before the grand jury. In his grand jury testimony Holmes admitted there had been a phone call to Wiley Fairchild about the Drew Fairchild case.

In March, 1985, Bud Holmes was indicted by the Hattiesburg grand jury on charges of perjury and obstruction of justice that in part alleged he had concealed evidence about the phone call with Wiley Fairchild from the farm.[52]

Bud Holmes' criminal trial began on June 17, 1985. After jury selection Mr. Holmes agreed to plead guilty to a criminal information charging him with contempt, with part of his contemptuous behavior being that he " * * * refused to disclose the substance of

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[51] *United States* v. *Wiley Fairchild,* Crim. No., H84-00009 (S.D. Miss., Hattiesburg Div). Count 1 of the indictment charged Mr. Fairchild with a violation of 18 U.S.C. Section 201(f), since amended, which prohibits the giving of a thing of value, such as royalty interests or a favorable loan, to a public official for and because of official acts to be performed by the public official. Mr. Fairchild pled guilty to this count of his indictment.

[52] *United States* v. *Paul H. (Bud) Holmes,* Crim. No. H.85-00004 (S.D. Miss., Hattiesburg Div.)

the aforementioned telephone call * * * ." As part of his plea, Mr. Holmes agreed to cooperate with the government and provide truthful testimony. Mr. Holmes appeared again before the grand jury following his plea, apologized for covering up his knowledge of the telephone call and told the grand jury of Judge Nixon's involvement. Mr. Holmes was fined $10,000 and sentenced to one year in prison following his guilty plea.[53]

The special federal grand jury investigation also brought to a close the criminal prosecution of Drew Fairchild for his role in the drug smuggling conspiracy. After the passing of the case to the files in December, 1982, and the restoration of the case to the active docket in January, 1983, Drew Fairchild's case had been continued because of delays in the Watkins prosecution until March of 1985. At that point and as a consequence of the special federal grand jury investigation into the handling of his case, Drew Fairchild was indicted on federal drug conspiracy charges, pled guilty and received a 3-year sentence with all but six months of the sentence suspended.[54] Drew Fairchild was also sentenced to 3 years imprisonment on his state charges, to be served concurrently with his federal sentence. As a result of a letter agreement between Drew Fairchild's counsel and current Forrest County District Attorney Glen White, Drew Fairchild served no time in state prison.

The Department of Justice also prosecuted Robert Royals, Drew Fairchild's co-manager at the airport who had never been prosecuted by Mississippi authorities. Mr. Royals was indicted by the special imprisonment for his role in the conspiracy.[55] Robert Watkins, the pilot of the drug-smuggling plane, remains a fugitive.

G. Judge Nixon's Post-Indictment Testimony

In both his April, 1984, interview with law enforcement authorities and his July, 1984, grand jury testimony under oath, Judge Nixon made no mention of his meeting with Wiley Fairchild at the offices of W.R. Fairchild Construction Co. in Hattiesburg, his conversation with Bud Holmes concerning Drew's case, his subsequent telephone call to Wiley Fairchild from Mr. Holmes' farm, and his later conversation with Carroll Ingram concerning Drew Fairchild. It was only during his testimony at his criminal trial, after Mr. Holmes, Mr. Ingram and Wiley Fairchild cooperated with the government, that Judge Nixon finally acknowledged his participation in these events.

Judge Nixon admits that he met with Wiley Fairchild at the offices of Fairchild Construction Company, although he claims that he did not do so at Mr. Fairchild's request. Rather, Judge Nixon contends that he simply stopped by the Fairchild office to "Keep in touch" with Wiley Fairchild and to discuss the progress of his investment. Judge Nixon also concedes that Wiley Fairchild raised the subject of "blackmail' in connection with Drew Fairchild's case,

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[53] After paying his fine Mr. Holmes challenged the remainder of his sentence and, on appeal, the fifth Circuit Court of Appeals held that under the criminal contempt statute Mr. Holmes could be sentenced to a fine or imprisonment, but not both. Accordingly, Bud Holmes served no time in prison for his crime. *United States* v. *Holmes*, 822 F.2d 481 (5th Cir. 1987).

[54] *United States* v. *Redditt Andrew Fairchild*, Crim. No. H85–00005 (S.D. Miss., Hattiesburg Div.).

[55] *United States* v. *Royals*, 777 F.2d 1089 (1985).

and complained about the disparate treatment between his son's case and the non-prosecution of Robert Royals, the co-conspirator. Judge Nixon claims that when confronted with Mr. Fairchild's allegation of "blackmail," he did not probe more deeply because he was "not a law enforcement officer," or Mr. Fairchild's attorney. According to Judge Nixon, Mr. Fairchild's complaints were "nonsense," but at the same time he was "shocked" by Mr. Fairchild's story.

Judge Nixon insists that Wiley Fairchild did not ask him to do anything in connection with Drew Fairchild's case. Nevertheless, Judge Nixon admits that he "had the impression" Mr. Fairchild wanted him to speak with Mr. Holmes, and Judge Nixon relayed Mr. Fairchild's complaints to Bud Holmes that very same day, purportedly because Mr. Fairchild's "blackmail" concerns were "weighing on my [Nixon's] mind."

Judge Nixon denies meeting Mr. Holmes at the District Attorney's office, and contends he did not drive with Mr. Holmes to the farm. However, the Judge admits meeting with Bud Holmes at the farm and speaking with Mr. Fairchild on the telephone. Judge Nixon contends that he did not "discuss" the facts of Drew Fairchild's case and specifically told Mr. Holmes he did not want to discuss the case, but it is undisputed that Drew Fairchild's case was a subject of his conversation with Mr. Holmes. Judge Nixon claims that Mr. Holmes was on the telephone, suddenly handed him the phone and said, "here, talk to Wiley Fairchild." Judge Nixon admits that during this telephone conversation Wiley Fairchild told him, "I'm glad you mentioned that matter to Bud * * * I'm satisfied."

Judge Nixon disputes the date of his meeting with Wiley Fairchild, his visit to Bud Holmes' farm and his telephone conversation with Mr. Fairchild. Both Bud Holmes and Wiley Fairchild have repeatedly placed these events as occurring before Drew Fairchild's case was passed to the file, and Carroll Ingram testified that his conversation with Wiley Fairchild about these events took place before Drew Fairchild's case was passed to the file. In contrast, Judge Nixon contends that these events took place in March 1983, after Drew Fairchild's case was passed to the file, such that his dialogue with Bud Holmes and Wiley Fairchild could have played no role in the handling of the Drew Fairchild drug prosecution.

At trial, Judge Nixon denied having been in Hattiesburg on May 14, 1982, the date Mr. Holmes believes the phone call may have taken place. Judge Nixon claimed that he was in Biloxi, 81 miles away, preparing for an asbestos trial. However, Judge Nixon's testimony was proven to be false during post-trial proceedings. Dental records confirmed that the Judge received treatment in Hattiesburg on May 14, 1982. Judge Nixon urged the subcommittee to accept his explanation that his testimony concerning May 14, 1982 was simply an "honest mistake" rather than deliberately false testimony.

It is impossible to reconcile Judge Nixon's own, post-indictment testimony regarding the key events with his repeated denials during his interview and grand jury testimony. Judge Nixon's various explanations—i.e., that he misunderstood the focus of the investigation, that the grand jury questions were vague, that the gov-

ernment trapped him into perjured testimony, etc.—cannot resolve to the Committee's satisfaction the contradictions between his interview statements and grand jury testimony on the one hand, and his post-indictment testimony on the other.

Judge Nixon conceded in his subcommittee testimony that he "didn't know" what question could have been asked of him in his interview and grand jury testimony that would have elicited the truth. He also told the subcommittee that in the grand jury he deliberately chose not to reveal Wiley Fairchild's blackmail allegations, the meeting at Holmes' farm and the telephone call. His stated justification—that he believed the blackmail complaint was "nonsense," hand been "resolved" and that it would have been "irresponsible" for him to reveal his knowledge to the grand jury—is inadequate. Judge Nixon consciously decided what portion of the truth federal investigators and the grand jury were entitled to hear. No witness, including a federal judge under investigation, may parcel the truth to serve his own purposes.

VI. Analysis of Articles of Impeachment

ARTICLE I

Article I charges Judge Nixon with giving false or misleading testimony during his appearance before the grand jury on July 18, 1984. During his grand jury testimony Judge Nixon denied, without qualification of any kind, that Forrest County District Attorney Paul Holmes ever discussed the Drew Fairchild case with him. This specific testimony was the subject of Count III of the criminal indictment against Judge Nixon. After hearing evidence the Mississippi jury unanimously found beyond a reasonable doubt that Judge Nixon's testimony on this point was intentionally false.

The Committee finds clear and convincing evidence that Judge Nixon made false or misleading statements to the grand jury regarding his conversations with District Attorney Holmes about the Drew Fairchild case. Even if one ignores the testimony of Bud Holmes concerning his conversations with Judge Nixon and the subsequent cover-up of the Judge's involvement, it is impossible to reconcile Judge Nixon's own version of the events in his trial and subcommittee testimony with his qualified denial in the grand jury in response to this question.

Judge Nixon claims that his testimony was true because he and Bud Holmes talked about Wiley Fairchild's complaint about "blackmail" in connection with the Drew Fairchild case, not about the "case" itself. Judge Nixon concedes that the alleged "blackmail" was about Drew Fairchild's case, that his talk with Holmes "related to" the case, and that certain details about the case, such as the terms of Drew Fairchild's plea agreement, were the subject of the conversation.

Judge Nixon's other principal defense in connection with this Article, both in his judicial proceedings and before the subcommittee, was that the word "discuss" is ambiguous. The Committee does not find this semantic argument to be persuasive. In the Committee's view Judge Nixon's conversation with Holmes was sufficiently a "discussion" for the Judge, having been sworn to tell the whole truth and nothing but the truth, to reveal fully his dialogue with

Mr. Holmes. Judge Nixon's failure to do so was a deliberate effort to mislead the grand jury.

Having found clear and convincing evidence that Judge Nixon testified falsely under oath about his contacts with Bud Holmes concerning Drew Fairchild's case, the Committee concludes that such conduct by a federal judge warrants his impeachment by the House and trial by the Senate.

ARTICLE II

Article II charges Judge Nixon with giving false or misleading testimony during his closing statement to the grand jury on July 18, 1984. This specific testimony was the subject of Count IV of the criminal indictment, and was found to be false beyond a reasonable doubt by the Mississippi jury.

The Committee finds clear and convincing evidence that Judge Nixon made false and misleading statements to the grand jury regarding his involvement in the Drew Fairchild case. In contrast to his defenses on Article I, Judge Nixon cannot claim that the question was "ambiguous," because the prosecutor simply asked Judge Nixon if he had anything else to tell the grand jury. Moreover, in his subcommittee testimony Judge Nixon revealed for the first time that his closing remarks to the grand jury were not angry, spontaneous utterances as first suggested by his counsel, but rather a prepared statement written prior to his grand jury appearance.

It is not necessary to credit the testimony of Bud Holmes, Wiley Fairchild or Carroll Ingram in determining whether Judge Nixon's closing remarks to the grand jury were truthful. The committee has compared Judge Nixon's trail and grand jury testimony and finds the two irreconcilable, particularly given the Judge's admission that he in fact recalled his "blackmail" meeting with Wiley Fairchild, his meeting with Mr. Holmes and the telephone call from Mr. Holmes' farm at the time of his grand jury appearance.

Contrary to the grand jury testimony set forth in Article II, Judge Nixon did indeed have "unofficial" involvement in the Drew Fairchild case and talked to three persons—Bud Holmes, Wiley Fairchild and Carroll Ingram—about the case. Moreover, according to Messrs. Holmes, Fairchild and Ingram, Drew Fairchild's case was passed to the files only after the Judge became involved. Mr. Holmes testified that he passed the case to the files in part because of Judge Nixon's influence, and Mr. Fairchild told Judge Nixon he was "satisfied" during the telephone call from Mr. Holmes' farm after Judge Nixon's intervention. Indeed, Judge Nixon acknowledged that he had exerted a "positive" influence over Drew Fairchild's case when he advised Mr. Ingram of his involvement.

Judge Nixon's denials in the grand jury were a deliberate effort to conceal his involvement and avoid any adverse publicity and embarrassment that might flow from the revelation that a federal Judge had played a role in a state criminal case, particularly the drug-smuggling prosecution of the son of a prominent businessman who had provided the Judge with lucrative oil investments. The Committee finds that Judge Nixon's false or misleading statements under oath before the grand jury warrant his impeachment by the House and trial by the Senate.

ARTICLE III

Article III charges Judge Nixon with undermining public confidence in the integrity and impartiality of the judiciary, betraying the trust of the people of the United States, disobeying the laws of the United States and bringing disrepute on the Federal courts and the administration of justice through his behavior during the federal investigation.

This Article charges Judge Nixon with a series of fourteen false or misleading statements given during his April 19, 1984 interview and his July 18, 1984 grand jury testimony that, taken as a whole, conclusively establish his conscious and deliberate effort to conceal his conversations with Wiley Fairchild, Carroll Ingram and Bud Holmes concerning the criminal drug prosecution of Drew Fairchild. Some of the statements set forth in Article III—i.e., that Mr. Holmes never "talked" to Judge Nixon about the Drew Fairchild case; that "nothing was ever mentioned about Wiley Fairchild's son"; that Judge Nixon "did not know of any reason" he would have met with Wiley Fairchild after the investment was finalized—are perhaps even more untruthful than the grand jury testimony in Articles I and II that led to the perjury convictions.

Judge Nixon's interview answers were false. His denials of any involvement in the Drew Fairchild case were repeated in response to questions that reasonably should have uncovered the truth.

Three months passed between the interview and his grand jury appearance. In his grand jury appearance, Judge Nixon repeated his falsehoods under oath before the grand jury. He again chose to make repeated, unqualified denials of any involvement in or knowledge of the Drew Fairchild matter, rather than reveal the truth.

Judge Nixon's interview statements and grand jury testimony fell far short of the standard of truthfulness required of any ordinary witness, much less a man privileged to wear the robe of a federal judge. The Committee finds that such conduct justifies Judge Nixon's impeachment by the House and trial by the Senate.

VII. Conclusion

The impeachment process protects our society by ensuring that those favored with high positions of public trust are held accountable for their actions. This is especially true of federal judges who, but for the rare instance of impeachment, enjoy life tenure in office. By providing federal judges with life tenure, the Constitution insulates the federal judiciary from political pressure. The Constitution, however, does not permit abuse of office.

The evidence before the Committee establishes that Judge Nixon lied to federal investigators and gave false testimony under oath to a federal grant jury. Such conduct impugns the integrity of the judiciary and renders Judge Nixon unfit to hold a high office of trust that daily requires him to judge credibility and seek the truth. Judge Nixon's decision to hide the truth and the predictable consequences of his conduct—his indictment, conviction, incarceration and suspension from the practice of law—stand as an embarrassment to the federal judiciary.

The Committee's role is not to punish Judge Nixon, but simply to determine whether articles of impeachment should be brought.

Under our Constitution, the American people must look to the Congress to protect them from persons unfit to hold high office because of serious misconduct that has violated the public trust. Where, as here, the evidence overwhelmingly establishes that a federal judge has committed impeachable offenses, our duty requires us to bring articles of impeachment and to try him before the United States Senate.

VIII. Oversight Findings

No oversight findings were made by the Committee.

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